

Internal Revenue Service

Number: **200831013**

Release Date: 8/1/2008

Index Number: 860D.01-00, 9100.00-00

Department of the Treasury

Washington, DC 20224

[Third Party Communication:

Date of Communication: Month DD, YYYY]

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:FIP:1

PLR-114011-08

Date:

May 2, 2008

Legend:

Trust 1 =

Trust 2 =

Issuer =

Originator and
Master Servicer =

Depositor =

Owner Trustee =

Indenture Trustee =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year 1 =

Dear :

This responds to a letter requesting an extension of time under section 301.9100-3 of the Procedure and Administration Regulations to make an election under section 860D of the Internal Revenue Code to treat Trust 1 and Trust 2 (collectively, the “Trusts”) as Real Estate Mortgage Investment Conduits (“REMICs”).

Facts:

Trusts were formed on Date 1 pursuant to a Trust agreement between Issuer, Originator and Master Servicer, Depositor, Owner Trustee, and Indenture Trustee. They were established to facilitate the securitization of five classes of offered notes created upon the transfer of mortgage loans from Issuer to Depositor. The transaction entailed the creation of one portion of an owner trust that qualified as a disregarded entity for tax purposes and a second portion of the owner trust that qualified as two REMICs, consisting of a lower tier REMIC (Trust 1), and an upper tier REMIC (Trust 2).

Trust 1 issued uncertificated REMIC regular interest classes to Trust 2 and a residual class. Trust 2 then issued five REMIC regular interest classes, as well as a residual class. The Trust agreement states that Indenture Trustee would make the REMIC elections with respect to the regular interest classes issued by Trust 2.

Indenture Trustee was responsible for the tax reporting of Trusts. Prior transactions by Issuer for which Indenture Trustee served as tax preparer involved an owner trust structure that issued notes and were, in their entirety, disregarded for tax purposes. In the experience of the Indenture Trustee, an owner trust structure that includes both a portion disregarded for tax purposes and a portion treated as a REMIC is extremely rare. The first and only time Indenture Trustee encountered such a structure, the deal issuer contacted Indenture Trustee to make certain they were aware of the unique nature of the transaction. There was no such communication with respect to the transaction involving Trusts.

The rare nature of the owner trust structure here and the fact that Issuer’s previous structures have been classified as owner trusts disregarded for tax purposes, contributed to Indenture Trustee missing the REMIC classifications in the Trust agreement. Furthermore, once the classification as a REMIC was missed at the

beginning of the process there was minimal chance the oversight would be detected. The oversight was discovered on Date 2 when the residual holder called to request the Form 1066 Schedule Q, Quarterly Notice to Residual Holder of REMIC Taxable Income or Net Loss Allocation. Indenture Trustee promptly prepared the REMIC tax returns (Forms 1066) and mailed the Form 1066 Schedule Q to the investors on Date 3. The Forms 1066 were filed with the Internal Revenue Service on Date 4.

Trusts make the following additional representations:

1. The request for relief was filed before the failure to make regulatory elections was discovered by the Service.
2. Granting the relief requested will not result in Trusts having a lower tax liability in the aggregate for all years to which the regulatory election applies than Trusts would have had if the election had been timely made (taking into account the time value of money).
3. Trusts did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time Trusts requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, Trusts did not choose to not file the election.

Law and Analysis:

Section 860D(b)(1) of the Code provides that an entity which meets the requirements of a REMIC under section 860D(a) may elect to be treated as a REMIC on the return for its first taxable year. Once elected, section 860D(b)(1) provides that the entity will be treated as a REMIC for the first taxable year in which the election is made and all subsequent taxable years until such status is terminated under section 860D(b)(2). Section 1.860D-1(d)(1) of the Income Tax Regulations provides that a qualified entity makes a REMIC election by timely filing, for its first taxable year, a Form 1066, U.S. Real Estate Mortgage Investment Conduit Income Tax Return, signed by a person authorized to sign that return. This regulation also provides a reference to section 301.9100-1 for rules regarding extensions of time for making elections.

Section 1.860F-4(b)(1) provides that the due date and any extensions for filing a REMIC's annual tax return are determined as if the REMIC were a partnership. Therefore, pursuant to section 1.6031-1(e)(2), a REMIC's annual return must be filed on or before the fifteenth day of the fourth month following the close of the taxable year, unless an extension is granted.

Section 301.9100-3 sets forth parameters for determining whether, under particular facts and circumstances, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements for an automatic extension under section

301.9100-2. Section 301.9100-3(a) provides that when a taxpayer does not meet the requirements for an automatic extension under section 301.9100-2, the taxpayer must provide evidence satisfactorily establishing that the taxpayer acted reasonably and in good faith and that granting relief will not prejudice the Government.

Section 301.9100-3(b)(1) provides that, subject to section 301.9100-3(b)(3), a taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer satisfies at least one of the following five criteria: (i) the request for relief was made before the Service discovered the failure to make the regulatory election; (ii) the failure to make the election was due to intervening events beyond the taxpayer's control; (iii) after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; (iv) the taxpayer reasonably relied on the written advice of the Service; or (v) the taxpayer reasonably relied upon a qualified tax professional, including a tax professional employed by the taxpayer, and that tax professional failed to make or failed to advise the taxpayer to make the election.

Section 301.9100-3(b)(2) provides that a taxpayer has not reasonably relied on a qualified tax professional if the taxpayer knew, or should have known, that the professional was either (i) not competent to render advice on the regulatory election or (ii) not aware of all relevant facts.

Section 301.9100-3(b)(3) provides that a taxpayer will not be deemed to have acted reasonably and in good faith if taxpayer does one of the following: (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested; (ii) was informed of the required election and the subsequent tax consequences but chose not to make the election; or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c) provides that the interests of the Government are prejudiced if granting relief would result in the taxpayer having a lower liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

In the instant case, Trusts represent that the request for relief was made prior to the Service discovering the failure to make the regulatory election, thereby satisfying the reasonable and in good faith requirement of section 301.9100-3(b)(1)(i). Trusts also assert that none of the exceptions under section 301.9100-3(b)(3) apply, and thus Taxpayer is not precluded from being deemed to have acted reasonably and in good faith. Additionally, Trusts represent that the Government will not be prejudiced under section 301.9100-3(c), since granting relief will not result in lower tax liability in the aggregate for all applicable years.

Conclusion:

Based on the information submitted and representations made, we conclude that Trusts have satisfied the requirements for granting a reasonable extension of time to allow them to make elections under section 860D to be treated as REMICs for Year 1 and subsequent taxable years. Therefore, the Forms 1066 filed on Date 3 on behalf of Trusts, electing REMIC status for Year 1, will be deemed to have been timely filed.

This ruling is limited to the timeliness of the REMIC election of Trusts. This ruling does not relieve Trusts from any penalty that they may owe as a result of the failure to timely file Forms 1066. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination. No opinion is expressed with regard to whether Trusts qualify as REMICs under subchapter M, part 1, of the Code.

No opinion is expressed with regard to whether Trusts' tax liability is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

A copy of this letter is being forwarded to the service center where Trusts file their return with instructions that although their Forms 1066 were not timely filed, Trusts are treated as having made timely elections under section 860D(b).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Elizabeth A. Handler
Elizabeth A. Handler
Chief, Branch 1
Office of Associate Chief Counsel
(Financial Institutions & Products)